

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWAYNE PITTS,

Defendant-Appellant.

UNPUBLISHED

April 3, 2003

No. 237308

Wayne Circuit Court

LC No. 98-001172-01

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right a June 18, 2001, decision refusing to modify an order of restitution in light of a partial reversal of defendant’s criminal convictions by this Court. See *People v Pitts*, unpublished per curiam opinion of the Court of Appeals, issued October 20, 2000 (Docket No. 215283). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Initially, defendant was convicted, after a bench trial, of one count of aiding and abetting false pretenses over \$100, MCL 750.218, one count of aiding and abetting attempted false pretenses over \$100, MCL 750.92, and two counts of stealing or retaining a financial transaction device (credit cards), MCL 750.157n(1). These convictions involved his alleged participation in the fraudulent use of credit cards at two retail stores in Redford. Defendant received sentences of two to ten years’ imprisonment for false pretenses; two to five years’ imprisonment for attempted false pretenses, and two to four years’ imprisonment for each count of stealing or retaining a financial transaction device. He was also ordered to pay restitution to one of the retail “victims” who had suffered a loss, Learning By Designs, in the amount of one-half of the total losses suffered, or \$22,592.

Although we affirmed one of defendant’s convictions, we specifically held that “the prosecution presented *no evidence* from which it could be reasonably inferred that defendant assisted or gave encouragement in the commission of the fraud against Learning By Designs” and reversed the conviction involving this fraud. *Pitts, supra*, slip op at 2 (emphasis added). Notwithstanding our previous decision, the trial court denied defendant’s motion to vacate the previous restitution order. In making its decision, it relied on the holding in *People v Gahan*, 456 Mich 264, 270; 571 NW2d 503 (1997), which advocated a broad interpretation of the provision in MCL 780.766(2) allowing for restitution “to any victim of the defendant’s course of conduct which gives rise to the conviction.” See *Gahan, supra* at 271. The trial court found that

the prosecution had shown by a preponderance of the evidence that the losses sustained by Learning By Designs were part of the scheme “to take money from the various parties who were injured in this case.” Defendant now appeals this decision.

Defendant maintains on appeal that the trial court’s decision was clearly erroneous given the fact that this Court found that the prosecution presented no evidence to link defendant to the fraud perpetrated against Learning By Designs. We agree. The prosecution relies on *Gahan*, *supra*, for its position maintaining that the term “course of conduct” should be interpreted broadly and that the crime victim’s rights act authorizes restitution of all victims, “even if those specific losses were not the factual predicate for the [defendant’s] conviction.” *Id.* at 270. However, as noted by defendant, the principles in *Gahan* are inapplicable to the instant case, given our previous decision that the prosecution failed to present any evidence that defendant was involved in the specific fraud against Learning by Designs.

In *Gahan*, the Court noted that MCL 780.766(1) defines “victim,” for the purposes of this statute, as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.” *Id.* at 270, n 7. The Court held that the defendant was properly ordered to pay restitution to victims in a repeated scheme to defraud his customers in the same or similar manner. Notwithstanding the principle in *Gahan* and the lesser preponderance of the evidence standard used in restitution determinations, MCL 780.767(4), we find the trial court’s decision not to vacate its order erroneous under the circumstances.

As noted above, we specifically found that the prosecution had presented no evidence to link defendant to the loss suffered by Learning By Designs. Thus this Court essentially held that Learning By Designs was not a victim of defendant’s criminal behavior. The law of the case doctrine provides that an appellate court’s decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case. *People v Herrera*, 204 Mich App 333, 340; 514 NW2d 543 (1994). Normally, the doctrine applies regardless of the correctness of the previous decision. *Id.* Although it is not an inflexible rule, *id.* at 340-341, after reviewing the prior decision in the instant case, we find this result appropriate. “Restitution awarded by a sentencing court is not a substitute for civil damages, but encompasses only those losses which are easily ascertained and measured and are a direct result of a defendant’s criminal acts.” *People v Tyler*, 188 Mich App 83, 89-90; 468 NW2d 537 (1991), citing *People v Heil*, 79 Mich App 739, 748-749, 262 NW2d 895 (1977).

Plaintiff has presented nothing to indicate that Learning by Designs is precluded from seeking civil damages as a result of defendant’s actions in a separate action. We therefore reverse the trial court’s restitution order and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray